

## CONTRACT FOR BODY WORN CAMERA SYSTEM

This contract is dated, made, and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Durham ("City"), a North Carolina municipal corporation, and VieVu LLC ("Contractor"), a limited liability company organized and existing under the laws of the state of Washington and a wholly owned subsidiary of The Safariland Group.

Sec. 1. Background and Purpose. The City desires to procure a body worn camera (BWC) system including cameras, a file transfer system for the associated audio/video (a/v) files, a digital file management system, installation services, and maintenance, that will allow for the capture and preservation of interactions between police officers and the public.

Sec. 2. Scope of Work. Presumption that Duty is Contractor's.

The Contractor shall provide to the City goods and services as follows:

Item	Quantity	Description
LE3 Camera with 90 day warranty as described in Attachment A	520	LE3 Body Worn Video Camera with 90 day warranty as described in Attachment A
Veripatrol Software	Unlimited server licenses	Veripatrol On-Site Video Management for LE3 Cameras
Veripatrol Mobile Software	Unlimited clients	Mobile is an optional add-on to VERIPATROL that allows for accessing video on cameras from computers installed in cars where a connection to the server is not available.
On-site product training services	2 days	On-site product training
Technical support services	Unlimited business hours	Telephone help desk and remote access technical support during the hours of 10:00 a.m. to 7:00 p.m. EST

**The VieVu LE3 BWC hardware shall perform as follows:**

- Record video and audio, day and night, standard definition or high definition, 68 or better degree field of view, 30 to 60 frames per second, H.264 or MPEG 4 AVC or better
- Provide internal memory/storage for 5 hours of HD 30 FPS a/v
- Provide a battery life that will support 5 total hours of recording time on a single charge
- A/v files shall automatically record date/time
- Shall associate a/v files with an officer so that a search can be performed on a/v files based on officer name or ID
- Include any activity in the metadata file such as viewing, copying, etc.

- Include LEDs and/or other indicators for notifications of recording activation, low battery, and low storage space
- Be waterproof and ruggedized

**The Veripatrol on-site video file management software system shall perform as follows:**

- Create and manage user accounts and users rights
- Restrict ability to create copies of videos or delete videos
- Have the ability to make DVD copies directly from file management system without a requirement to first copy to desktop
- Maintain log and/or chain-of-custody of any activity related to a/v files
- Automatically purge or delete a/v files based on event type with associated file retention
- Search for video based on date, time, officer ID, case number, and event type
- Scrub (fast forward/rewind) video during playback
- Provide video integrity checking

**The Veripatrol mobile software system shall perform for officers in the field as follows:**

- Ability to view video while in the field for up to 4 days after upload
- Ability to easily identify status of video transfer (in queue for transfer, in progress, or complete) from MDC to central storage
- Locally cached data such as changes to user login accounts and passwords shall update automatically once per day or manually at any time by an administrator
- Ability to tag video while in the field for event type, associated with file retention and automatic purging
- Ability to enter case number and suspect name in searchable fields
- Ability to scrub (fast forward/rewind) video during playback
- Access to videos shall be secure, by authorized users only
- A user other than an administrator shall not have the ability to delete a video
- Automatically transfer files over the cellular network efficiently and effectively without interference with other operations on MDC

**On-site training services shall be provided as follows:**

- Three ½ day train-the-trainer training sessions for up to 10 officers per session
- Half day administrator training session for IT staff
- Handouts to include Power Point presentations and User Guides

**Technical support services shall be provided during the hours 10:00 a.m. to 7:00 p.m. EST as follows:**

- Unlimited telephone technical support for Veripatrol server installation. The City will provide a Windows Server 2012 R2 in a virtual environment and will provide Contractor with remote access
- Unlimited telephone technical support for Veripatrol Mobile installations
- Unlimited telephone technical support for Veripatrol and Veripatrol Mobile maintenance



Unless otherwise agreed upon by the City, the Contractor shall deliver to the City all goods and services as indicated in the following schedule:

Item	Quantity	Delivery Schedule
LE3 Cameras with 90 day warranty	520	Initial quantity of up to 260 within 7 days of receipt of purchase order from the City; 2 <sup>nd</sup> quantity of up to 260 within 7 days of receipt of purchase order from the City
Veripatrol Software	unlimited server licenses	Within 7 days of receipt of purchase order from the City
Veripatrol Mobile Software	Unlimited licenses for mobile data computers (MDCs)	Within 7 days of receipt of purchase order from the City
On-site Product Training Services	2 days	Within 28 days of receipt of purchase order from the City
Technical Support Services	Unlimited contacts	Beginning within 1 day of receipt of purchase order from the City

Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 2.1. Battery Replacement. Battery replacement for cameras purchased pursuant to this agreement, will be provided by Contractor at a cost of 125.00 per replacement.

Sec. 2.2. Camera Upgrade. After June 30, 2016, the City shall have the option to exchange all or some of the LE3 cameras purchased pursuant to this contract for the LE4 or LE4-mini at a cost of 199.00 per camera. All exchanges must be completed by June 30, 2017.

Sec. 2.3. Software Maintenance. For a period of at least 3 years from date of final product acceptance and at no additional cost to City, Contractor shall provide all upgrades and fixes necessary to assure that Server, Client, and Mobile software continue to function with at least the capabilities listed in section 2 of this contract. Server software shall be supported in Operating systems at and above Microsoft Windows Server 2012r2, and Client and Mobile software shall be supported in Operating systems at and above Microsoft Windows 7.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Compensation. Contractor's Billings to City. In accordance with the terms of this agreement, the City shall pay the Contractor the amounts specified in Attachment B for the Work to be performed pursuant to this contract. The total amount to be paid to the Contractor pursuant to this agreement shall not exceed \$393,999.00.

The City shall have fourteen (14) days from receipt of goods and services to be delivered pursuant to this agreement to ensure that the goods and services perform, as outlined in this contract, to the reasonable satisfaction of the City. During this period, the City shall have the



right to install and utilize said goods and services in order to evaluate operation and performance. By midnight E.S.T. on the last day of this period, the City shall provide to the Contractor written acceptance or rejection of all or part of the goods and services provided.

If rejected, unless otherwise agreed upon by the City, the Contractor shall have twenty-eight (28) days to remedy the issue to the reasonable satisfaction of the City before the Contractor may be considered by the City to be in breach of this agreement.

Following written acceptance of the goods and services provided pursuant to this agreement, the Contractor shall send invoices to the City for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: a description of the goods and services provided, the date such goods and services were provided, the amount to be paid for each item and service, and such other information as may be reasonably requested by the City. Within twenty (20) days after the City receives an invoice for goods and services accepted by the City in accordance with this agreement, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Attachments. The following attachments are made a part of this contract:

Attachment A *PRODUCT WARRANTY, DISCLAIMER OF WARRANTIES, AND LIMITATION OF LIABILITY* containing one (1) page

Attachment B *COST BREAKDOWN* containing *one (1)* page.

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control.

Sec. 9. Notice. (a) Notices required or permitted by this agreement shall be given by personal delivery, fax, electronic mail, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows.

To the City:

Randy Browning  
City of Durham Police Department  
505 W. Chapel Hill Street  
Durham, NC 27701  
The fax number is (855)854-4442.  
Email: Randy.Browning@DurhamNC.gov

To the Company:

Joe Pioli  
VieVu LLC  
105 W. John St.  
Seattle, WA 98119  
The fax number is 206-299-3380.  
Email: joe.pioli@viewu.com

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, electronic mail, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery,



whichever first occurs.

Sec. 10. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below, "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses and interest and reasonable attorneys' fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

Sec. 11. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

Sec. 12. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 13. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in



accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

By: \_\_\_\_\_

Preaudit certification:

Notary:

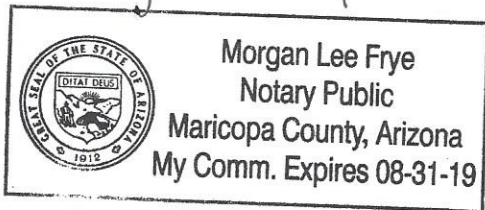
VieVu LLC

Morgan Lee Frye

By: Joe Pioli

Joe Pioli

Vice President of Sales and Marketing



ACKNOWLEDGMENT BY LIMITED LIABILITY COMPANY

State of Arizona

County of Maricopa

I, a notary public in and for said county and state, certify that Joe Pioli personally (1) appeared before me this day, (2) stated that he or she is \_\_\_\_\_ Vice President of Sales and Marketing of VieVu LLC, a limited liability company organized and existing under the laws of the State of Washington, (3) stated that the company's operating agreement specifies that the individual holding that title is authorized to sign this contract for the company, (4) acknowledged that the foregoing contract with the City of Durham carries on the company's business in the usual way, and (5) acknowledged the due execution, under seal, of the contract on behalf of the company. This the 10th day of December, 2015.

My commission expires: 08-31-2019

Notary Public Morgan Lee Frye

JP